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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No.———

BLANCHE STANFIELD,
Executrix of the Last Will and Testament of
Lloyd B. Stanfield, Deceased,
Petitioner,

vs.

THE PAUL REVERE LIFE INSURANCE COMPANY,
Worcester, Massachusetts, a Corporation,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

To the Honorable Chief Justice and to the Associate Justices of the Supreme Court of the United States:

The petitioner, Blanche Stanfield, Executrix of the Last Will and Testament of Lloyd B. Stanfield, deceased, respectfully prays that a writ of certiorari issue to review a judgment of the Circuit Court of Appeals for the Tenth Circuit in that certain cause therein entitled "The Paul Revere

Life Insurance Company, Worcester, Massachusetts, a Corporation, Appellant, vs. Blanche Stanfield, Executrix of the Last Will and Testament of Lloyd B. Stanfield, Deceased, Appellee" being therein No. 3171. Said judgment was entered by said Circuit Court of Appeals on October 30, 1945 (R. 25). The decision is not unanimous but contains an independent and dissenting opinion (R. 28). A petition for rehearing was filed by this petitioner (R. 31). An order denying said petition for rehearing was entered November 28, 1945 (R. 38).

OPINION BELOW

The majority opinion of the Circuit Court of Appeals for the Tenth Circuit in this cause is set forth in full in the record on pages 25 to 28 inclusive, and the dissenting opinion of said Court is set forth in full in the record at pages 28 to 29.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended Act of Feb. 13, 1925, 43 Stat. 938, 28 USCA 347. This petition for writ of certiorari is filed within three months of the denial of petition for rehearing. (Nov. 28, 1945.) This application for writ is made pursuant to paragraph 5 (b) of rule 38 of the rules of this Court and in particular the part thereof which suggests that a writ of certiorari may be issued where a Circuit Court of Appeals has rendered a decision in conflict

with the decision of another Circuit Court of Appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided a federal question in a way probably in conflict with applicable decisions of this Court; or has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

The cause sought to be reviewed herein involves the decision of an important question in the law of life insurance and particularly a double indemnity rider attached to a life insurance policy providing for double indemnity in the event of accidental death.

QUESTION PRESENTED

Point 1

Does a life insurance policy containing a double indemnity rider reading as follows (R. 8):

> "If the death of the insured occurs while the attached policy is outstanding and in force under its original conditions and prior to the insured's sixty-fifth birthday, and results directly and independently of all other causes from bodily injuries effected solely through external, violent and accidental means, within ninety days of the occurrence of the accident, and if such accident (except in the case of accidental drowning or of internal injuries revealed by an autopsy) is evidenced by a visible contusion or wound on the exterior of the body, the

sum insured provided on the first page of the attached policy will be doubled,"

issued in Oklahoma to a resident of Oklahoma cover death admittedly from sunstroke where the evidences of bodily injury are the following (R. 17):

> "The sunstroke symptoms present were nausea, vomiting, there were some blood streaks in the material vomited, cyanotic condition of lips at first and body at time of death, retching, cold and clammy hand, dilated pupils of eyes, visible appearance of shock, excessive perspiration, cramping, poor pulse, and extreme pallor in face covered by profuse perspiration, which continued until death."

and (R. 11-12):

> "He looked funny all over and his shirt was wet with perspiration and his face was covered with perspiration. I helped him get in bed and felt of his hands and arms and they were sticky wet with perspiration and cold. He complained of pains in his arms and Mr. McMahon and I rubbed his arms with alcohol and then I bathed him off with cold water. His eyes were very peculiar looking. The pupils in his eyes were enlarged and his eyes were starry and glassy. His face was a pale yellow color and his lips were blue and looked swollen. He stayed in bed until about 5:00 o'clock. He complained of pain all afternoon and continued to perspire profusely. Soon after he came into the house he started vomiting and vomited almost continually until he died. Many times he was gasping for breath. Later on he complained of pain in his chest. About 6:00 o'clock my father and mother came out to the farm and my father took my husband to see the Doctor in Ardmore. I had gone to take some help home and when I got back to the house they had already left and I followed them in to Ardmore. When I got to the

home of my father and mother my husband was there in bed. They had some medicine Dr. Boadway had sent out. I gave him this medicine all night according to directions. Dr. Boadway came out about 9:00 o'clock the next morning and again about 11:00 o'clock. Lloyd never did get any better as far as I could tell. He kept on getting worse until a few minutes before two o'clock when he died. He vomited blood practically all of the time and continued to perspire freely. Some kind of fluid was coming out of nose which was hot. His face was the funniest color I ever saw and his lips were blue and purple. He continuously complained of pain in his arms and chest until he died. He vomited just a few seconds before he died about 2:00 o'clock on the afternoon of June 27th. His skin had turned blue practically all over his body. His hands were still just as cold and clammy as they were at first. His arms would draw up and he would clench his fists. His eyes never did clear up. They were starry and glassy and the pupils were enlarged and his eyes looked like they were sticking out of his head."

SUMMARY STATEMENT OF MATTERS INVOLVED

The facts in the case were stipulated (R. 7-18). The deceased, a strong, able-bodied man, while working in the field, suffered a sunstroke on June 26, 1944, near noon, which admittedly caused death on the next day about 2:00 P. M. There is no question about the validity of the policy or its provisions. As is set forth in the majority opinion (R. 25) death from sunstroke in the manner suffered by deceased, is death by accident suffered solely through external, violent and accidental means within the meaning of the double indemnity rider sued on under Oklahoma

law. The only question is whether or not such accident was "evidenced by a visible contusion or wound on the exterior of the body" (R. 25-6).

The District Court, following the cases from the Seventh Circuit Court of Appeals found for petitioner (R. 18). The Circuit Court of Appeals herein, recognizing the conflict between cases from the Circuit Court of Appeals, Seventh Circuit, the Federal District Court from Pennsylvania, and various state courts, and the Circuit Court of Appeals, Third Circuit and state courts, chose to follow the latter.

REASONS RELIED UPON FOR ISSUANCE OF WRIT

The reasons relied on for issuance of writ, briefly stated, are:

1. The decision of the Circuit Court of Appeals is in conflict with this Court's decision in *United Mutual Acc. Assn.* vs. *Barry*, 33 L. Ed. 65.

2. The decision of the Circuit Court of Appeals is in conflict with the following cases from the Circuit Court of Appeals, Seventh Circuit: *Wiecking* vs. *Phoenix Mutual Life Ins. Co.*, 116 Fed. 2d 90; *Mutual Life Ins. Co.*, vs. *Schenkat*, 62 Fed. 2d 236, and *Warbende* vs. *Prudential Insurance Company*, 97 Fed. 2d 749, 117 A. L. R. 760.

It is also in conflict with *Huss* vs. *Prudential Ins. Co. of America*, 37 Supp. 364 (D. C. Pa.).

3. The decision of the Circuit Court of Appeals herein decides an important question of local law probably in conflict with applicable local decisions.

4. The decision of the Circuit Court of Appeals herein is probably untenable and therefore in conflict with the state law as yet unannounced by the Supreme Court of Oklahoma.

Wherefore, your petitioner respectfully prays that a writ of certiorari issue out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Tenth Circuit, requiring said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings in said Court in the case therein numbered 3171 and entitled "The Paul Revere Life Insurance Company, Worcester, Massachusetts, a Corporation vs. Blanche Stanfield, Executrix of the Last Will and Testament of Lloyd B. Stanfield, deceased" to be reviewed and determined by this Honorable Court, as provided by law; that the judgment of said Circuit Court of Appeals be reversed by this Honorable Court, and for such further relief as to this Court may seem proper and just in the premises.

J. B. Moore,
Ardmore, Oklahoma,
Counsel for Petitioner.

Thos. W. Champion,
Louis A. Fischl,
Ardmore, Oklahoma,
Of Counsel.